Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Mr. Gene A. Fricke
102 East Hollis St. APT 4A
Nashua, NH 03060

CERTIFIED MAIL NO.: 7000 1530 0003 4883 5816
RETURN RECEIPT REQUESTED
AND FIRST CLASS U.S. MAIL

File No.: EB-04-BS-085
Citation Acct. No.: C20053226001

CITATION

Released: December 1, 2004

By the Enforcement Bureau, Boston Office:

1. This is an Official Citation issued pursuant to Section 503(b)(5) of the Communications Act of 1934, as amended ("Act"),[1] to Gene A. Fricke for violation of Section 302(b) of the Act,[2] and Section 2.803(a)(1) of the Commission's Rules.[3]

2. Investigation by the FCC's Boston Office revealed that on September 13, 2004, Gene A. Fricke offered for sale, via recorded transmission on the Citizen Band frequency 27.185 MHz (Channel 19), models of non-certified Citizens Band transceivers, namely Galaxy transceiver models. According to the Commission's records, these devices have not received a FCC equipment authorization, which is required, for Citizens Band transmitters marketed in the United States.

3. Section 302(b) of the Act[2] provides "no person shall manufacture, import, sell, offer for sale, or ship devices or home electronic equipment and systems, or use devices, which fail to comply with regulations promulgated pursuant to this section." Section 2.803(a)(1) of the Rules[3] provides that "… no person shall sell or lease, or offer for sale or lease (including advertising for sale or lease), or import, ship or distribute for the purpose of selling or leasing or offering for sale or lease, any radio frequency device unless: (1) In the case of a device subject to certification, such device has been authorized by the Commission in accordance with the rules in this chapter and is properly identified and labeled…." Gene A. Fricke's offer for sale of these devices violates both sections.

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[1] 47 U.S.C. § 503(b)(5)
[2] 47 U.S.C. § 302a(b)
[3] 47 C.F.R. § 2.803(a)(1)

4. Section 95.603(c) of the Rules requires that "[e]ach CB transmitter (a transmitter that operates or is intended to operate at a station authorized in the CB) must be certificated." Section 95.655(a) of the Rules states that "[n]o transmitter will be certificated for use in the CB service if it is equipped with a frequency capability not [authorized for CB in Part 95 of the Rules]." This section also states that "([CB t]ransmitters with frequency capability for the Amateur Radio Services … will not be certificated.)" Additionally, Section 95.655(c) of the Rules prohibits any internal or external add-on device that functions to extend the transmitting frequency capability of a CB transmitter beyond its original capability.

5. Additionally, dual use CB and amateur radios of the kind at issue here may not be certificated under the Commission's rules. Section 95.655(a) of the rules[4] states: " . . .. ([CB] Transmitters with frequency capability for the Amateur Radio Services . . .. will not be certificated.)" *See also* FCC 88-256, 1988 WL 488084 (August 17, 1988). This clarification was added to explicitly foreclose the possibility of certification of dual use CB and amateur radios, *see id.*, and thereby deter use by CB operators of frequencies allocated for amateur radio use.

6. Furthermore, the Commission has revised Section 2.1204(a)(5) of its rules[5] to prohibit all marketing and/or offering for sale in the United States of such devices even when the purchaser(s) had provided assurances that the transceivers are being bought solely for export. ALL DOMESTIC MARKETING OF SUCH DEVICES VIOLATES THE COMMUNICATIONS ACT OF 1934, AS AMENDED, AND THE COMMISSION'S RULES.

7. Subsequent violations of the Communications Act or of the Commission's Rules may subject the violator to substantial monetary forfeitures not to exceed $11,000 for each such violation or each day of a continuing violation,[6] seizure of equipment through *in rem* forfeiture action, and criminal sanctions including imprisonment.[7]

8. Gene A. Fricke may request a personal interview at the closest FCC location to its place of business,[8] namely:

Federal Communications Commission
1 Batterymarch Park
Quincy, Massachusetts 02169-7495

which can be contacted by telephone at XXX XXX-XXXX. They must schedule this interview to take place within 14 days of the date of this citation. Gene A. Fricke. may submit a written statement within 14 days of the date of this citation to the following address:

Federal Communications Commission
1 Batterymarch Park
Quincy, Massachusetts 02169-7495

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[4] 47 C.F.R. § 95.655(a)
[5] 47 C.F.R. § 2.1204(a)(5) revised effective February 28, 2000
[6] See 47 C.F.R. § 1.80(b)(3)
[7] See 47 U.S.C. §§ 401, 501, 503, 510
[8] See 47 U.S.C. § 503(b)(5)

which can be contacted by telephone at XXX XXX-XXXX. Any written statement should specify what actions have been taken to correct the violation outlined above. When corresponding with the Commission, case number EB-04-BS-085 should be referenced.

9. Any statement or information provided may be used by the Commission to determine if further enforcement action is required.[9] Any knowingly or willfully false statement made in reply to this notice is punishable by fine or imprisonment.[10]

10. IT IS ORDERED that copies of this Citation shall be sent by both Certified Mail Return Receipt Requested and First Class U.S. Mail to Gene A. Fricke, 102 East Hollis Street, APT 4A, Nashua, NH 03060

FEDERALCOMMUNICATIONS COMMISSION

Dennis Loria
District Director
Boston Office

[9] *See* Privacy Act of 1974, 5 U.S.C. §552a(e)(3)
[10] See 18 U.S.C. §1001